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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARKUS AUNKOFER,
MARC MENZEL, and ULRICH STÄHLIN

Appeal 2016-000949
Application 13/028,905[1]
Technology Center 2600

Before CARL W. WHITEHEAD JR., SHARON FENICK, and JOHN R. KENNY, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–11, which constitute all the claims pending in this application. (Appeal Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b)(1).

We affirm.

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[1] Appellants identify Continental Automotive GmbH as the real party in interest. (Appeal Br. 1.)

Invention

Appellants' invention relates to traffic-related local information. A vehicle includes a reception device to receive data sent from a device in another vehicle in the vicinity. Traffic-related local information is ascertained from this received data. (Spec. Abstract.)

Representative Claim

Claim 1, reproduced below, is representative:

> 1. A method for ascertaining at least one traffic-related local information item for a first vehicle, comprising:
>
> using a reception device of at least one first radio system of the first vehicle to receive data including the at least one traffic-related local information item that is transmitted from a second radio system in at least a second vehicle in a vicinity of the first vehicle defined by a reception range of the reception device, wherein the reception device in the at least first radio system is configured for vehicle-internal capture and evaluation of data for at least a first operating variable from the one vehicle; and
>
> ascertaining the at least one traffic-related local information item from the data received from the second radio system,
>
> wherein the at least one traffic-related local information item is a vehicle density information item.

Rejections on Appeal

The Examiner rejects claims 1, 5–7, 10, and 11 under 35 U.S.C. § 103(a) as unpatentable over Logan (US 2007/0037605 Al; pub. Feb. 15, 2007) and Hutchins et al. (US 2005/0040970 Al; pub. Feb. 24, 2005) ("Hutchins"). (Final Action 2–7.)

The Examiner rejects claims 2, 3, and 8 under 35 U.S.C. § 103(a) as unpatentable over Logan, Hutchins, and Aubel et al. (US 2003/0021330 Al; pub. Jan. 30, 2003) ("Aubel"). (Final Action 7–9.)

The Examiner rejects claims 4 and 9 under 35 U.S.C. § 103(a) as unpatentable over Logan, Hutchins, and Gaddy et al. (US 2007/0063824 Al; pub. Mar. 22, 2007) ("Gaddy"). (Final Action 9–10.)

Issues

Appellants raise the following issues:

(A) Did the Examiner err in finding that Logan, in combination with Hutchins, teaches or suggests transmitting a traffic-related local information item between vehicles?

(B) Did the Examiner err in finding that Hutchins, in combination with Logan, teaches or suggests a monitoring apparatus in a vehicle?

ANALYSIS

Logan, cited by the Examiner in the rejection of claim 1, relates to alerts regarding the relative position of a cell phone and another object. (Logan, ¶¶ 19–24, Abstract.) In one embodiment, rules may be established by a user to determine an action which occurs as a result of a condition, with the condition satisfied by relative positions of two of a plurality of electronic devices. (*Id.* at ¶¶ 85–89.) In one example, the user's cell phone and the user's vehicle are two of the electronic devices. (*Id.* at ¶¶ 90–91.)

Hutchins, which is also used by the Examiner in the rejection of claim 1, relates to a system for providing information in roadways and other traffic ways. (Hutchins, Abstract.) Road sensors, which may sense traffic density,

are positioned along the roadway and convey signals regarding sensed road conditions to a vehicle receiver. (*Id.* at ¶ 52.)

The Examiner finds that the combination of Logan and Hutchins teaches or suggests all the elements of claim 1. (Final Action 3–6.) Specifically, the Examiner finds that Logan discloses the claimed invention, with the exceptions of (i) a disclosure of vehicle-to-vehicle communications in Logan, and of (ii) the traffic-related local information item being a vehicle density information item. (*Id.*) With respect to vehicle-to-vehicle communications, the Examiner finds that the invention of Logan "surrounds the interaction between two electronic devices . . . inside their respective vehicles" and cites Logan's embodiment in which a user has a hand held cellular phone and the user's automobile includes a second cellular link. (*Id.* at 4–6.) Additionally, with respect traffic density information, the Examiner concludes that Hutchins teaches or suggests a traffic density sensor transmitting information regarding traffic density information. (*Id.* at 5–6.)

(A) Findings with Respect to Logan

Appellants argue, with respect to the Examiner's findings regarding Logan and the claimed first and second vehicles, that the Examiner maps a cell phone and a Bluetooth-equipped watch to the first and second radio systems, and that "there is no reason to consider putting a cell phone in a first vehicle and a Bluetooth equipped watch linked to the cell phone in a second vehicle." (Appeal Br. 6.) However, we agree with the Examiner (Answer 7–8) that this argument is unpersuasive, as it focuses on the watch and cell phone embodiment of Logan, and does not address the Examiner's reliance on the disclosure in Logan that one possible device in

communication would be a cellular link in a user vehicle. (Final Action 4, citing Logan ¶¶ 90–91, Fig. 3.)

Appellants further argue that "there is no way to extrapolate" Logan's interdevice communication "to unrelated devices in separate vehicles." (Appeal Br. 7) and that Logan does not suggest "intervehicular communication between devices that a user does not own and operate" (Reply Br. 3.) However, these arguments are not commensurate with the scope of the claim and thus unpersuasive, as the claim language does not set forth a requirement of disjoint ownership of the first and second vehicles. Appellants do not present further arguments with respect to the Examiner's findings regarding intra-vehicle communications taught or suggested by Logan to one of ordinary skill in the art (*see, generally*, Appeal Br. 6–7; Reply Br. 2–3), such as findings regarding the use of Logan's inter-device communication from cell phones in two vehicles to allow "one party in a family to ascertain the location of another." (Final Action 4.)

Appellants also argue that Logan's disclosure of the calculation and transmission of information regarding the distance between two devices calculated in Logan is not properly analogous to traffic-related local information. (Appeal Br. 6; Reply Br. 2–3.) However, Appellants' Specification provides that "the traffic-related local information item can be a vehicle density information item and/or *a distance information item relating to the other vehicle* and/or a relative movement information item for the one and the other vehicle or the other vehicles." (Spec. ¶ 18, emphasis added.) Thus, we agree with the Examiner that the transmission of a distance calculation teaches or suggests the transmission of traffic-related local information.

(B) Findings with Respect to Hutchins

Appellants argue, with respect to the Examiner's findings regarding Hutchins, that Hutchins discloses only a stationary monitoring apparatus. (Appeal Br. 8.) However, the Examiner finds that Hutchins' teaching that a sensor may be positioned "in or along the highway" would teach or suggest the positioning in other vehicles, in order to "forewarn other uninvolved motorists" of the presence of a first responder at a traffic-density scene. (Final Action 5; Answer 9–10.) We agree with the Examiner's finding (Final Action 5–6) that one of ordinary skill in the art would have found Hutchins to teach or suggest that possibility for road sensors. We additionally note that, while not cited by the Examiner, Hutchins contains a description of a vehicle sensor which records that the vehicle "is stationary and may be involved in an accident, or broken down," and reports this event to trigger warnings to vehicles elsewhere along the travel way. (Hutchins ¶ 50.)

We are, therefore, not persuaded of error in the Examiner's findings regarding the teachings and suggestions of the combination of Logan and Hutchins and we affirm the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a). Claim 7 is argued on substantially the same bases (Appeal Br. 9), and we additionally affirm the Examiner's rejection of that claim, and of claims 2–6 and 8–11, not separately argued with particularity. (Appeal Br. 8–10.)

DECISION

We affirm the Examiner's rejection of claims 1–11 under 35 U.S.C. § 103(a) as unpatentable.

Pursuant to 37 C.F.R. § 1.136(a)(1)(iv), no time period for taking any subsequent action in connection with this appeal may be extended.

AFFIRMED